

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

MARVIN C. HAYES

PETITIONER

VS.

CIVIL ACTION NO. 3:16cv121-DPJ-FKB

LAUDERDALE COUNTY CIRCUIT
COURT and BILLIE SOLLIE

RESPONDENTS

REPORT AND RECOMMENDATION

Marvin C. Hayes filed this action pursuant to 28 U.S.C. § 2241 while he was being held as a pretrial detainee in the Lauderdale County Detention Facility (LCDF) on drug charges. In his Petition, he argued that he was entitled to dismissal of the charges and release from jail because he had never been given an initial appearance and because his preliminary hearing was not held until four months after his arrest. Respondents filed a motion to dismiss the petition for failure to state a claim.

A recent supplement to the motion filed by Respondents indicates that on September 15, 2016, Hayes entered a guilty plea in the Circuit Court of Lauderdale County to the charge of possession with intent and was sentenced to a term of six years. An order of nolle prosequi was entered as to two other charges. The official website for the Mississippi Department of Corrections (MDOC) indicates that he is now in MDOC custody and is housed at the Central Mississippi Correctional Facility.

Hayes's request that the charges be dismissed and that he be released from the custody of LCDF is clearly moot, as he is no longer at that facility. To the extent that Hayes's petition were construed as a petition under 28 U.S.C. § 2254, it would likewise be

subject to dismissal, as he has not yet exhausted his state remedies as required by 28 U.S.C. § 2254(b)(1). For these reasons, the undersigned recommends that Respondents' motion be granted and that this matter be dismissed.

The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendation contained within this report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C. § 636; Fed. R. Civ. P. 72(b); *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

Respectfully submitted, this the 21st day of November, 2016.

/s/ F. Keith Ball
UNITED STATES MAGISTRATE JUDGE